

**Town of Hamburg
Board of Zoning Appeals
Meeting - November 3, 2008**

The Town of Hamburg Zoning Board met for a regular meeting on Monday November 3, 2008 at 7:00 p.m. in Room 7B to discuss the following applications. Those attending included:

Chairman Vincent Gugluizza
Vice-Chairman Brad Rybczynski
Secretary Jack Rahill **Excused**
Commissioner Shawn Connolly **Excused**
Commissioner Paul Eustace
Commissioner Chuck Morlock
Commissioner Jim Sortisio
Attorney Joseph Shaw
Attorney Cheryl McFadden Zak
Building Inspector Roger Gibson
Recording Secretary Laurie Wutz

Acting Secretary Rybczynski read the following Legal Notice of Public Hearing:

Tabled Application #5220 - Richard Mead for a proposed subdivision at 4808 Lakeshore Road.

Jay Pohlman, attorney for the applicant again came before the Board and gave a brief history of the application. The Mead family has received Planning Board preliminary approval to subdivide their property, and a positive recommendation was sent to the Zoning Board regarding the applicant's request. Mr. Pohlman explained that currently there are three living units on one parcel, one two family dwelling and a single family dwelling (all units are occupied). Subdividing the lot would split the two family dwelling down the middle (making each home a zero lot line home), giving each unit individual ownership. Each unit would have separate deed and utilities. The driveway will continue to serve as it currently does. Nothing on the property will change from what is currently there.

Mr. Pohlman presented the Planning Board minutes from 1998.

Mr. Pohlman requested the Board to make a decision on the issue of two living units on one parcel, the Building Inspection issue is a side yard variance of .32'.

Mr. Gibson questioned about the "As Built" drawings, with regards to the fire wall. Mr. Pohlman stated he gave a copy of them to Kurt Allen, and that Mr. Allen felt that the plans sufficiently showed a wall of 2 hour burn time.

Richard Schmaucher was present to express that the request was for a change in use on the property, and that the Zoning Board should treat everyone fairly.

Sharon Meade stated they have no intention of selling the property outside of the family.

Findings: Mr. Gugliuzza thanked Mr. Pohlman for his patience and felt all concerns have been addressed.

Mr. Rybczynski made a MOTION to approve Application # 5220 for the continuation of a non-conforming use by allowing 2 dwelling units on one lot and one dwelling unit on the other at 4808 Lakeshore Rd. Mr. Eustace seconded all voted in favor. **Granted**

Application # 5224 - Ryan Homes for an extension on a temporary structure (model home) from nine months to twelve months at 6182 Woodford Drive.

Brian Muldowney, Project Manager for Ryan Homes, came before the Board to request an extension on the model home in the Wellington Woods Subdivision until June 2009. There are 9 remaining lots to be sold of the total 54 original lots. The model home is already sold, and the new owner will take possession after the remaining lots are sold.

Findings: Mr. Rybczynski made MOTION to approve Application #5224 for an extension on the model home at 6182 Woodford Drive until June 2009 (8 months). Mr. Eustace seconded, all voted in favor. **Granted**

Tabled Application # 5228 - Rachael Martin for an accessory use permit to allow overnight parking of an oversized tow truck at 5778 Walden Drive. Violates 280-24 B (2), code-one commercial vehicle less than 3/4 ton, actual-oversized vehicle exceeding 3/4 ton, variance need-to allow oversized vehicle.

Mr. Pohlman and Ms. Martin again came before the Board to explain that Ms. Martin is the

property owner, and her boyfriend resides at her address. Her boyfriend works for Pinto Towing in Angola. Pinto Towing has the thruway contract between the Angola and Lackawanna exits. They are requesting a permit to park the tow truck approximately 2 nights per week at her residents.

Mr. Pohlman informed the Board that Ms. Martin would be agreeable to installing some sort of screening such as, trees or bushes to block the view of the truck from the immediate neighbors.

Findings: Mr. Gugliuzza stated that the tow truck operator is not the homeowner, this is a self-created issue. A truck that size alters the character of the neighborhood, and there have been complaints reported.

Mr. Gugliuzza made a MOTION to deny Application # 5228 for an accessory use permit to allow parking of an oversized vehicle at 5778 Walden Drive. Mr. Morlock seconded. Mr. Rybczynski opposed. **Denied** 4-1 vote

Tabled Application # 5229 - J. Rutowski Properties for an oversized detached sign with electronic message sign at 4923 Lakeshore Rd. Violates 280-261 - 1, Electric message signs not permitted in NC zone. Violates 280-258 Signs permitted-code 10 sf, actual 66.80 sf, variance needed 56.80 sf. (Note existing sign is 48.75 sf).
Violates 280-203 D (10) Route 5 overlay district - code 12', actual 17', variance needed 5'.
(Note permit history - 1999-317 sign permit issued no variance - 1986-401 sign permit issued no variance)

Jay Pohlman, legal counsel for J. Rutowski Properties (Wanakah Pharmacy) again addressed the Board. Wanakah Pharmacy has been in business for 30 years. The signage was last changed in 1999. Mr. Pohlman presented a new design for the business sign, instead of the original two pole sign, a single pylon sign would be used. The new sign would still be a reader board.

Mr. Pohlman pointed out that given the location of the Wanakah Pharmacy the new signage would not be out of line. Mr. Pohlman made a point that the new ordinance omitted the NC district.

Tony Battista, the adjacent property owner was present and stated that he has no objection with Wanakah Pharmacy using a reader board.

Findings: Mr Gugliuzza stated that the new ordinance, which was just passed regarding electronic message boards does not allow reader boards in a NC district. They are only allowed in certain zoning districts (Camp Rd & Overlay Districts), the Town Board made it clear where they were allowed. He also stated that the Zoning Board of Appeals does not legislate use, but follows the code.

Mr. Gugliuzza made a MOTION to deny Application #5229 for the electronic message board at 4923 Lakeshore Rd. Mr. Morlock seconded , all voted in favor. **Denied**

Mr. Gugliuzza made a MOTION to approve Application # 5229 for 56.80 sq. ft. variance at 4923 Lakeshore Rd. Mr. Morlock seconded, all voted in favor. **Granted**

Mr. Rybczynski made a MOTION to approve Application #5229 for a 5' height variance at 4923 Lakeshore Rd. Mr. Eustace seconded, all voted in favor. **Granted**

Application # 5236 - Walgreens for 3 area variances at 6185 South Park Ave.
Violates 280-219 (E) - Parking Spaces, code 78 spaces, actual 44 spaces, variance needed 34 spaces.
Violates 280-74 (A) - Minimum Front Setback, code 40', actual 0, variance needed 40'.
Violates 280-229 (B) (1) - Setback For Off Street Parking, code 35', actual 12', variance needed 23'.

Sean Hopkins, Legal Counsel for Walgreens, James Boglioli, Esq., from Benderson Development Co., and Tony Battista from Benderson Development Co., were present to represent Walgreens. Mr. Hopkins presented a power-point presentation as well as before and proposed after photos of the site. Aerial photos were also exhibited explaining that the project is unique because it is located in both the Village and the Town. The proposed building will be 13,650 sq. ft. in size. Walgreens has worked closely with the Village of Hamburg architectural review board to maintain the character of the Village. They have also worked closely with the Village Planning Board and the Town Planning Board to satisfy the requirements and concerns of both. The Town Planning Board sent a positive recommendation to the Town Zoning Board regarding the three variances requested. The Village Planning Commission has also issued a positive recommendation to the Village Zoning Board regarding the five requested area variances needed for the Village. The two parcels will be merged to one if the variances requested from both the Town and the Village are passed, but would still be subject to the Town requirements on the north end, and to the Village requirements on the south end.

Walgreens has been working with the neighboring property owners to satisfy any concerns they may have. They have also met with the Hamburg School District, who was satisfied with the proposal from Walgreens. Mr. Rybczynski read several letters from the following Town residents in favor of the project into record (copies enclosed):

Dr. Kathleen Nowak - 4176 Legion Drive
James Duggan - 140 Prospect
Alica Duggan - 140 Prospect
Dominic Corto & Margaret Corto - Corto's Salon
Dr. James Blake - 5602 Country Club Lane

The following residents were present to voice opposition to the Walgreens project:

Patricia Hover - 4166 Walker Place
Jack Lee - 4161 Legion Drive
Paul Budniewski - 4178 Walker Place
Norma Nathan - Sickmon Ave.

Ms. Hover feels Walgreens is not a good fit for the Village, there are many vacant buildings which would work well. She also feels that while Walgreens is not planning on being open 24 hrs at this time, they could change that at any time. Ms. Hover stated that Peter Danforth, Village Traffic Safety, requested that Walgreens wait 6 months until residents get used to the new traffic circles.

Residents also expressed concerns over large trucks using the Walker Place driveway, large trucks using residential streets. Congestion with traffic and school buses. Large vehicle traffic, greens pace taken away, vehicle admission.

Mr. Hopkins explained each variance:

- (1) Parking Spaces, code 78 spaces, actual 44 spaces, variance needed 34 spaces. Mr. Hopkins stated there is no need for Walgreens to have 78 parking spaces.
- (2) Minimum Front Setback, code 40', actual 0, variance needed 40'. With the project in both the Village and the Town it would be impossible to develop the parcels without variances. The developers have worked closely with both the Village and Town Planning Departments. Both were satisfied.
- (3) Setback For Off Street Parking, code 35', actual 12', variance needed 23'. It is only approximately 2.5 parking spaces that don't comply, there is not a large parking area in closely proximately of Walker Place.

Mr. Hopkins also reviewed each criteria for the area variance balancing test:

- (1) The Applicant (Benderson Development) will receive substantial benefits, with little or no detrimental effects to the surrounding neighborhood with respect to the requested three area variances.
- (2) Any undesirable change to the character of the neighborhood? Improved aesthetic, improved street scape, pedestrian friendly. Extensive landscaping a benefit to property. No undesirable change.
- (3) Request achievable by any other means? Impossible for anyone to develop parcels without variances due to both Town and Village requirements. Town Planning Board and Village Planning Commission have reached a consensus that this is appropriate building location given setback requirements.
- (4) Is variance substantial? Forty foot setback variance could be considered substantial, the only reason requesting 40' setback to try to reach a consensus with Town and Village zoning code. With respect to the parking space variance 44 parking spaces is adequate. Only 2.5 parking spaces do not comply with the 35' setback requirement.
- (5) Does request have an adverse environmental effect? Town Planning Board lengthy environmental impact study. Village Board of trustees, Village Planning Commission, NYSDEC, ECDPW, NYSDOT, had no objection to the Town being the lead agency pursuant to SEQR. The Town's Planning Dept. issued a negative declaration on August 20, 2008. No adverse environmental effect. No adverse visual impact, project designed to provide access pedestrian sidewalks. Strong consideration should be made to the Planning Board's negative declaration.
- (6) Is difficulty self-created? It is the Applicant's position that the difficulty is not self-created due to the Village and Town zoning code requirements. Mr. Hopkins pointed out that the decision can not be made solely on whether or not difficulty is self-created.

Mr. Hopkins concluded that substantial evidence has been provided to justify the requested area variances. The criteria for the balancing test has been met.

Mr. Gugliuzza asked about the truck traffic. Mr. Hopkins stated that tractor trailer deliveries would take place between 8am and 10pm, 1-2 times per week. Vendor deliveries would be 1-2 times per week. Trucks would access Walker Place back into the loading area and leave by Legion Drive. They would be subject to idling requirements of 1-2 hours. The NYSDOT feels traffic would not be an issue.

Findings: Mr. Gugliuzza stated that the presentation has cleared up any questions he may have had. Mr. Rybczynski agreed, the presentation was thorough, but the only criteria not met for him was the last, is the difficulty self-created, understands that can not be sole criteria.

Mr. Rybczynski made a MOTION to approve Application #5236 for a variance of 34 parking spaces at 6185 South Park Ave. Mr. Sortisio seconded, all voted in favor. **Granted**

Mr. Gugliuzza made a MOTION to approve Application # 5236 for a front setback variance of 40' at 6185 South Park Ave. Mr. Sortisio seconded, all voted in favor. **Granted**

Mr. Gugliuzza made a MOTION to approve Application # 5236 for an parking area setback variance of 23'. Mr. Eustace seconded, all voted in favor. **Granted**

Application # 5237 - John & Marie Benny for a detached garage addition at 3092 Amsdell Rd. Violates 280-278 (B- 4a) - Detached Accessory Structures, code 850 sf, actual 1918.55 sf, variance needed 1068.55 sf.

John Benny came before the Board to explain that the addition is needed for storage of his classic car collection (12 cars). There is no work performed on the vehicles on site. Work on the addition was started before he brought the plans into the building Inspection Dept. for a building permit.

Mr. Gibson stated that the existing garage is non-conforming and the addition would be an additional 400 sq. ft.

Neighbor John Sausner and his wife were present. They stated they have seen commercial activity on the property (7 pickup trucks, 2 box trailers), and felt the Benny's were running a landscaping business. They have no objection to the addition if it is for their car collection, but do not want commercial activity to continue on the premises.

The Benny's son Robert was also present explaining that the trucks belong to him, for his landscaping business. He explained that he will be moving out of his parents house in about a month, taking his equipment with him.

Mrs. Benny spoke stating that Wally Bratek, from the Building Inspection Dept. told them that is was okay to have the vehicles stored there as long as they were lined up. She also expressed that they are new to the neighborhood and did not know they were doing anything wrong.

Findings: Mr. Gugliuzza suggested tabling the application one month so Board members could do an on-site inspection. He also suggested that the applicants contact the Building Inspection Dept. regarding business activity conducted at their residence.

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Mr. Gugliuzza made a MOTION to table Application #5237 for one month so Board members can do an on-site inspection. Mr. Morlock seconded, all voted in favor. **Tabled**

Other Business

Board Members had a discussion on the procedure involving extensions on applications. Clarification from the Town Board is required.

Mr. Rybczynski made a MOTION to approve the minutes from October 7, 2008. Mr. Eustace seconded, all voted in favor motion carried.

MOTION to ADJOURN was made by Mr. Rybczynski, seconded by Mr. Eustace . Motion carried. Meeting adjourned at 10:45 pm. The next Zoning Board meeting will be held Tuesday, December 2, 2008.

Respectfully Submitted,

Jack Rahill, Secretary
Board of Zoning Appeals

Date: 11/13/08